

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2009-479-W/S

IN RE:)
)
Application of United Utility Companies,)
Inc. for adjustment of rates and charges)
and modification of certain terms and)
conditions for the provision of water and)
sewer service.)
_____)

**MEMORANDUM IN OPPOSITION TO APPLICANT’S PETITION
FOR REHEARING OR RECONSIDERATION AND ALTERNATIVE
REQUEST FOR APPROVAL OF BOND**

North Greenville University (“NGU”), intervenor in the above-referenced matter, would respectfully show unto the Public Service Commission (the “Commission”) that United Utility Companies, Inc.’s (“United Utility”) Petition for Rehearing or Reconsideration and Alternative Request for Approval of Bond should be denied.

United Utility argues that its due process rights were denied by the fact that the Commission’s denial of its application was based, in part, on the Commission’s finding that United Utility was failing to bill a portion of households receiving sewer services. United Utility argues it “was not on notice that the number of occupied but unbilled premises in its systems statewide would be at issue or that it would be required to provide this information on a statewide basis in order for the Commission to rule on its application.” (United Utility Petition, at p. 3.) At the public night hearing held on February 25, 2010 in Piedmont, South Carolina, however, United Utility was clearly put on notice that it had customers who were receiving

wastewater services, but were not being billed for those services. Monique Nesbitt offered the following testimony:

Now my thing is, they're asking for this rate increase, but if they could just work strategically in their company to come up with better ways of getting revenues, such as maybe going out and surveying these neighborhoods to see who you don't have as customers, who you should be billing, that would recover a lot of your cost right there. Because me, I went a whole year, a year and a half or whatever, without paying a bill. That was money you could have got from me, that other people have been paying.

I know of at least four neighbors that this has happened to. I know of one neighbor, they stayed there, I want to say two years, never got a bill. They eventually moved, so they never paid sewage. . . . You do a survey, you obtain your customers that are currently out their getting your services and not paying for it. And once you find all those customers – I'm sure there's plenty of them – just on my street alone there's like three or four who had never heard of them and were never paying a bill. . . . [J]ust go around and check and see what customers you actually do have and you're not billing.

Tr. 2 at 168-69. Thus, nearly a month before the final hearing in this matter, United Utility had notice of this issue. That the Commission relied, in part, upon this information in denying United Utility's application is clearly not a denial of due process. United Utility clearly had notice of the issue of unbilled services and had the opportunity to both investigate that issue and cross-examine witnesses who offered testimony.

Moreover, in response to the public testimony at the March 23, 2010 hearing concerning unbilled premises receiving services, United Utility conducted a survey of three neighborhoods and called its own rebuttal witness, Mr. Lubertozzi, to address the issue. United Utility did not object to the testimony offered by the various public witnesses on this issue and did not request that the Commission allow it the opportunity to present additional information to the Commission by way of an additional hearing or a late-filed exhibit.

The South Carolina Supreme Court has discussed the requirements of due process:

Due process is flexible and calls for such procedural protections as the particular situation demands. The requirements of due process include notice, an opportunity to be heard in a meaningful way, and judicial review. To prove the denial of due process in an administrative proceeding, a party must show that it was substantially prejudiced by the administrative proceeding.

Leventis v. South Carolina Dept. of Health and Environ. Control, 340 S.C. 118, 132-32, 530 S.E.2d 643, 650 (2000) (internal citations omitted). United Utility had notice of the unbilled premises and was not substantially prejudiced by the administrative proceeding.

Moreover, the Commission did not rely solely on United Utility's failure to bill all customers in denying United Utility's application. As the Order makes clear, the Commission also found other problems with billing, including prorated billing and inconsistent billing, and failure to keep records in accordance with the NARUC system of accounting.

By statute, the Commission is vested with jurisdiction to supervise and regulate the rates and service of every public utility in this State, together with the duty, after hearing, to ascertain and fix such just and reasonable standards, classifications, regulations, practices, and measurements of service to be furnished, imposed, observed and followed by every public utility in this State. S.C. Code Ann. § 58-5-210 (1976). "In order to reach a conclusion, the Commission ha[s] the duty to believe or disbelieve evidence submitted. The Commission sits like a jury of experts." Hilton Head Plantation Utilities v. Public Service Comm'n of South Carolina, 312 S.C. 448, 441 S.E.2d 321, 323 (1994). Thus, it is within the sound discretion of the Commission to make findings of fact and determine whether a proposed rate increase is just and reasonable. The Commission so acted and there is no valid basis for a rehearing.

United Utility alternatively requests that the Commission approve a bond in the amount of \$311,426.00 pursuant to S.C. Code Ann. § 58-5-240(D). Section 58-5-240(D) vests the Commission with determining the "reasonable amount" of the bond. North Greenville

respectfully asserts that, based on the outstanding issues discussed in the Commission's Order denying United Utility's application, there is no bond amount which is reasonable in this case. In the event the Commission believes that it is obligated under § 58-5-240(D) to set a reasonable bond amount, North Greenville respectfully submits that a reasonable bond should be far in excess of \$311,426.00, as requested by United Utility, in order to ensure that the customers' interests are adequately protected. North Greenville proposes a bond in the amount of \$467,139.00, which represents three times the annual difference between the revenue which would be generated by UUC's currently approved rates and the rates resulting from ORS's proposed accounting adjustments and recommended ROE in this matter and accepting the assumption of Order 2010-375 that 11% of UUC's served premises are occupied but not being billed.

Respectfully submitted,

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